

BEFORE THE
FEDERAL MARITIME COMMISSION

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**ORIGINAL
FILED**

JUN 27 2016

DOCKET NO. 15-11

Federal Maritime Commission
Office of the Secretary

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.

**COMPLAINANTS' JOINT RESPONSE TO RESPONDENTS' TWO SEPARATELY
INTERPOSED MOTIONS SEEKING IDENTICAL RELIEF OF AN EXTENSION OF
TIME TO REPLY ON THEIR MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission's Rules of Practice and Procedure 46 C.F.R. 502 *et seq.*, Complainants, by their Counsel, Marcus A. Nussbaum, Esq. respectfully submit this brief in Joint Response to Respondents' two separately interposed motions seeking identical relief of an extension of time to reply on their Motion for Judgment on the Pleadings.

Respondents' First Motion for an Extension of Time

On June 21, 2016 Respondents filed a motion seeking an extension of time "...until July 15, 2016 of any and all deadlines applicable to Respondents that are or may be due before that date, including but not limited to their Reply to Complainants' Response to Respondents' Motion for Judgment on the Pleadings."

Respondents' Second Motion for an Extension of Time

On June 27, 2016 Respondents filed a second motion seeking "...an extension until July 15, 2016 to respond to Complainants' Response to Respondents' Motion for Judgment on the Pleadings."

To the extent that the above two separately interposed motions inarguably and upon their face seek *identical* relief, the following is respectfully submitted as a Joint Response to Respondents' separately filed but disingenuously duplicative motions.

NATURE OF CLAIM

This action arises out of Respondents' numerous violations of the Shipping Act of 1984, 46 U.S.C. §40101 et seq., in that after Respondents had shipped certain automobiles owned by Complainants from the United States to Kotka, Finland, where they were to have been released to Complainants as purchasers, said automobiles were instead converted, sold, and unlawfully released by Respondents to third parties at a location owned by or within Respondents' control. Additionally, Respondents unlawfully exercised maritime liens against Complainants' automobiles.

STATEMENT OF FACTS

Complainants respectfully rely upon the findings of fact made by the Commission in its Notice of Default and Order to Show Cause of March 30, 2016. For purposes of brevity, said findings of fact are incorporated by reference hereto and made a part hereof, as if fully set forth herein.

NATURE OF RESPONDENTS' RELIEF REQUESTED

As set forth above, in their two separately interposed motions, Respondents have sought *identical* relief, to wit: an extension of time within which to submit a Reply to their pending Motion for Judgment on the Pleadings.

To the extent that as of the time of this writing the only motion now pending before the Presiding Officer which would require an extension "...until July 15, 2016 of any and all deadlines applicable to Respondents that are or may be due before that date..." is Respondents' pending Motion

for Judgment on the Pleadings, the two separately interposed motions are inarguably, undeniably, and completely duplicative in nature.

Consequently, and to the extent that Respondents' first motion *subsumes* the relief redundantly sought in Respondents' second motion seeking *identical relief*, it is respectfully submitted that the Presiding Officer should reject Respondents' second motion as having been improperly filed and as seeking an unwarranted "second bite at the apple".

RECENT PROCEDURAL HISTORY

On June 10, 2016 Respondents filed their instant Motion for Judgment on the Pleadings. It should be noted that it was *solely* Respondents who elected to bring on and file said motion on the date chosen, which was neither set, directed, nor ordered to have been interposed on any date certain by the Presiding Officer, but rather was selected by Mr. Jeffrey.

On June 13, 2016 Respondents filed a "Status Report" a copy of which is annexed hereto as Appendix "A". Within said report, Mr. Jeffrey specifically set July 15, 2016 as a self-proposed deadline for Respondents' Reply on their Motion for Judgment on the Pleadings. It should be noted that Complainants made a good faith effort to 'meet and confer' with Mr. Jeffrey in order to submit a Joint Status Report, but owing to Mr. Jeffrey's recalcitrant and uncooperative behavior, which will be, *inter alia*, the subject of a further submission to be separately filed with the Presiding Officer, Mr. Jeffrey through such conduct and behavior rendered the submission of a Joint Status Report impracticable, if not impossible.

Additionally contained within Mr. Jeffrey's Status Report was his advise that he would be "...out of the Country during the period June 23 through July 5, 2016". It remains unclear as to *why* Mr. Jeffrey would have elected to file Respondents motion and to calendar a date for a Reply thereto knowing that he would be "out of the country" for an extended period prior to his self-imposed deadline. Having done so, however it is respectfully submitted that Mr. Jeffrey cannot now fairly decry either 'unfair surprise', nor having sufficient time to interpose a Reply.

ARGUMENT

Respondents' Failed Arguments

Mr. Jeffrey disingenuously argues that he should be granted an extension of time as a personal accommodation because his "...trip was planned (and paid for) well before [Mr. Jeffery] became Counsel for Respondents." In so doing, however, Mr. Jeffrey *studiously ignores* and actively attempts to obscure the fact that Respondents interposed their motion, and Mr. Jeffery his self-imposed deadline for a Reply thereto, *long after* his trip had been scheduled. It is therefore disingenuous in the extreme for Mr. Jeffrey to attempt to argue that Respondents interposing of their motion was an 'unexpected surprise', nor their self-imposed deadline for their Reply unanticipated.

Respondents' Inept and Incompetent Representation

As the Presiding Officer is aware, Respondents' counsel has inexplicably assigned principal portions of litigation of this case to an extremely junior and inexperienced lawyer whose demonstrated ineptitude and incompetence has been exposed by virtue of major procedural defects in recent submissions, misidentification of covering correspondence, along with improper titling and characterization of same. Though the lack of competence of this associate was patent on its face, your affirmant was nonetheless *shocked* to see Mr. Jeffery, in formal papers filed with the Presiding Officer, state the following:

Ms. Vohra's "...knowledge of the Shipping Act and her litigation experience is as yet quite limited. Thus, absent the requested extension, Respondents will effectively be **without counsel** during the time period at issue." (emphasis added)

It is near impossible to overstate the jaw-dropping candor of Respondents' counsel having admitted to assigning litigation of this matter to an 'attorney' whose representation of Respondents is tantamount to being "without counsel". Even more mind-numbing, is Mr. Jeffery's mistaken belief that this could possibly constitute an appropriate and sufficient ground for requesting an extension of time to reply to Respondents' own motion, the utter absurdity of which precludes rejoinder, other than to state that such half-hearted excuses cannot possibly be allowed to lie. Further, and to the extent

that Respondents' counsel's firm employs *over Six-Hundred and Fifty (650) attorneys*, it requires a willing suspension of disbelief to find that Mr. Jeffrey's own alleged *personal* unavailability renders his clients "without counsel".

Mr. Jeffrey's Unclean Hands

Least Mr. Jeffrey argue that personal circumstances have prevented him from adhering to his own self-imposed deadline for Respondents to reply to their pending motion, it is noted that since June 13, 2016 Mr. Jeffrey has personally authored over twenty (20) separate emails, and no less than *eight (8)* separate motion submissions in addition to Respondents' initial status report. In light of the inordinate amount of emails authored by Mr. Jeffrey, many of which were completely lacking in substance and dealing solely and exclusively with mocking, berating, insulting your affirmant, and extended personal exchanges with the Commissions' staff, it is difficult if not impossible to comprehend why Mr. Jeffrey would now require an extension of time to file a Reply on a motion he personally initiated, by a deadline he personally selected.

Respondents' Admission That Their Second Motion is Duplicative

In yet another moment of *astounding* candor Mr. Jeffrey readily admits that Respondents' second motion seeks *exactly and precisely* the *identical* relief sought in their first motion as follows:

"The reason for this request is that Counsel for Respondents is currently out of the country through July 5, 2016. This fact was noted in Respondents' Proposed Schedule, **as well as in Respondents' Motion for Extension of Time filed on June 21, 2016.**" (emphasis added)

In sum, Mr. Jeffrey readily admits as follows: (1) he knew he would be out of the country at the time he decided to interpose Respondents' motion, and set a self-imposed deadline for a Reply thereto; (2) Mr. Jeffrey proffered this excuse in Respondents' first motion seeking the identical relief filed on June 21, 2016; and (3) Mr. Jeffrey offers *no further excuse or argument whatsoever* in Respondents' second motion seeking the identical relief of an extension of time to reply, warranting that same should be granted by reason of his personally being out of the country.

Needless to say, the foregoing is not only disingenuous in the extreme and redolent with improper and bad faith litigation practices, but is further abundantly revealed as nothing but a transparent pretext to vex, annoy, and harass Complainants and their counsel in order to unreasonably delay timely completion of discovery and expeditious resolution of Complainants' claims.

Finally, and with regard to Mr. Jeffrey's *outrageous* suggestion that Complainants be deprived of the opportunity to submit a written Response to Respondents' instant duplicative motions, due to alleged 'time constraints', it is respectfully submitted that by virtue of the service and filing of Complainants' instant Response, such requested relief is now *moot*. Further, Complainants respectfully decline to waive their right to submit the instant Response, and are left only to wonder at the 'righteous indignation' of Mr. Jeffrey, should Complainants' ever suggest that Respondents be deprived of their opportunity to respond to *any* motion made by Complainants in this matter.

CONCLUSION

As set forth above, Respondents have inexplicably filed two separate motions each seeking the identical relief of an extension of time to file their Motion for Judgment on the Pleadings.

As further set forth above, Respondents' counsel, Mr. Jeffrey had *full knowledge* of his travel plans at the time that he decided to interpose Respondents Motion for Judgment on the Pleadings, and at the time that he selected the self-imposed deadline of July 15, 2016 by which to file a Reply.

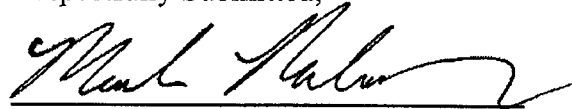
As additionally set forth above, Respondents' counsel has further inexplicably assigned litigation duties in this matter to a very junior, inept, and incompetent associate who has to date committed *significant* procedural and substantive errors in this case.

As also set forth above, Mr. Jeffrey has made Respondents' duplicative motions with "unclean hands" by virtue of his apparently having had ample time to author numerous childish and insulting emails, and endlessly burden Complainants with insufferable lectures on rules and procedure, while claiming inadequate time to submit Respondents' Reply based on their own self-imposed deadline.

Consequently, and together with all other arguments set forth above, it is respectfully requested that the Presiding Officer *reject* Respondents' improper and duplicative second motion; *deny* the relief requested in both motions; *direct* Respondents to file a Reply to their Motion for Judgment on the Pleadings on or before July 15, 2016; and grant Complainants such other and further relief as the Presiding Officer may deem just and proper.

Dated: Brooklyn, New York
June 27, 2016

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

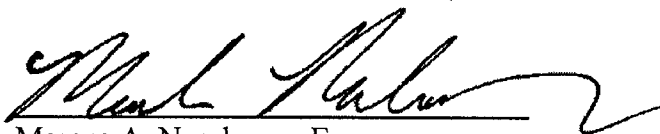
Marcus A. Nussbaum, Esq.
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Brooklyn, NY 11224
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Attorney for Complainants
marcus.nussbaum@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' JOINT RESPONSE TO RESPONDENTS' TWO SEPARATELY INTERPOSED MOTIONS SEEKING IDENTICAL RELIEF OF AN EXTENSION OF TIME TO REPLY ON THEIR MOTION FOR JUDGMENT ON THE PLEADINGS** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", with a long, sweeping horizontal line extending to the right.

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainant
marcus.nussbaum@gmail.com

Dated: June 27, 2016 in Brooklyn, New York.

APPENDIX “A”



**NIXON
PEABODY**

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
CLERK OF COURT
JUL 13 2016

Anjali Vohra
Associate
avohra@nixonpeabody.com

Nixon Peabody LLP
799 9th Street NW
Suite 500
Washington, DC 20001-4501
202-585-8000

June 13, 2016

VIA FIRST CLASS MAIL

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondent's Status Report on Scheduling

Please contact me if you have any questions.

Sincerely,


Anjali Vohra

Enclosures

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV, ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV, ET AL

RESPONDENT'S STATUS REPORT ON SCHEDULING

Pursuant to the Initial Order, as modified by the Presiding Officer's Order of May 24, Respondents Empire United Lines and Michael Hitrinov submit the following status report on scheduling. As previously advised, Complainants declined to participate in discussion of a Joint Status Report despite the clear requirement to do so.

In proposing the below schedule, Respondents have taken into account a number of considerations, including (i) Respondents' belief that the "just, speedy, and inexpensive determination" of this matter called by FMC Rule 1 can best be secured by first resolving Respondents' Motion for Judgment on the Pleadings, without much, if any, time consuming and costly discovery, and (ii) that Counsel for Respondents will be out of the country during the period June 23 through July 5, 2016. The former consideration is reflected, inter alia, in the proposal that discovery pending resolution of the Motion for Judgment on the Pleadings be

placed under the supervision of the Presiding Officer, while the latter is reflected, inter alia, in the considerable extra time afforded Complainants to respond to the Motion for Judgment on the Pleadings and the slight extension for Respondents' reply thereto.

PROPOSED SCHEDULE

June 10 – Respondents' Motion for Judgment on the Pleadings (already filed)

July 5 – Complainants' Response to Motion for Judgment

July 15 – Respondents' Reply

[Discovery prior to Decision on Motion for Judgment limited to that needed for Motion for Judgment and subject to prior approval of Presiding Officer]

Date X – Decision on Motion for Judgment

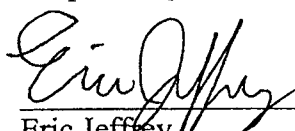
Date X – [If Needed] Discovery begins, subject to possible motion to limit discovery pending motion for summary judgment

Date X + 15 – Interrogatories and Requests for Documents due. Notices of Deposition may be sent for depositions, with all depositions to be taken within the period August 1, 2016 through September 30, 2016

Date X + 45 – Responses to Interrogatories and Requests for Documents due

October 21, 2016 – Discovery ends

Respectfully submitted,


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June 27, 2016
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573
Attn: Office of the Secretary
Attn: Karen V. Gregory

Re: *Igor Ovchinnikov, et al, v. Michael Hitrinov a/k/a Michael Khitrinov, et al.*
FMC Docket 15-11

Kairat Nurgazinov, v. Michael Hitrinov a/k/a Michael Khitrinov, et al.
FMC Informal Docket 1953(I)

Dear Ms. Gregory:

I represent the Complainants in the above referenced matters.

Attached, please find an original and five copies Complainants' Joint Response to Respondents' Two Separately Interposed Motions Seeking Identical Relief of an Extension of Time to Reply on their Motion for Judgment on the Pleadings. Respondents have been additionally served herein via First Class Mail.

We thank the Commission for its continued courtesy and consideration.

Respectfully Submitted,



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Attorney for Complainants

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